

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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BILL DRAFT 2009-MGz-26* [v.31] (2/2)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Recommendations of MH/DD/SA Oversight Comm. (Public)

Sponsors: Senator Nesbitt./Representative Insko.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT VARIOUS LAWS TO IMPROVE THE MENTAL HEALTH,
3 DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES SYSTEM,
4 AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON
5 MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE
6 SERVICES.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.(a). Merger or Consolidation of LME's. –**

9 (1) The Secretary of the Department of Health and Human Services shall not
10 take any action prior to June 1, 2010, that would result in the merger or
11 consolidation of local management entities (LMEs), or that would establish
12 consortia or regional arrangements for the same purpose.

13 (2) Notwithstanding the provisions of subdivision (1) of this section, contiguous
14 LMEs may implement a merger or consolidation if at least one of the
15 following criteria is satisfied:

16 a. At least one of the LMEs does not meet the catchment area
17 requirements of G.S. 122C-115 and the merger or consolidation is to
18 overcome noncompliance with G.S. 122C-115; or

19 b. Each board of county commissioners within the multicounty area
20 comprising each of the LMEs involved in the proposed merger or
21 consolidation has approved the merger or consolidation.

22 (3) Contracts between LMEs for service authorization, utilization review, and
23 utilization management functions do not constitute a merger or consolidation
24 as addressed in this section.

25 **SECTION 1.(b). Leadership Academy Funds. –** There is appropriated from the
26 General Fund to the Department of Health and Human Services, Division of Mental Health,
27 Developmental Disabilities, and Substance Abuse Services, the sum of ____ (\$) for the
28 2009-2010 fiscal year and the sum of ____ (\$) for the 2010-2011 fiscal year. These funds shall
29 be allocated to LMEs for LME staff participation in the Mental Health Leadership Academy at
30 the University of North Carolina Kenan-Flagler Business School.

31 **SECTION 1.(c). LME Peer Training. –** Beginning July 1, 2009, the Department
32 of Health and Human Services, Division of Mental Health, Developmental Disabilities, and
33 Substance Abuse Services, in consultation with the Mental Health Leadership Academy, shall

hold at least one meeting each calendar quarter to facilitate peer training and peer sharing among LMEs with respect to best practices and innovations in management and coordination of mental health, developmental disabilities, and substance abuse services.

SECTION 1.(d). Medicaid Waivers. –

- (1) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services may develop and apply to the Centers for Medicare and Medicaid Services for additional 1915(b), and 1915(c) Medicaid waivers in order to increase the flexibility of LMEs with respect to management and coordination of mental health, developmental disabilities, and substance abuse services. If approved, the Department shall not implement any waiver except as authorized by an act of the General Assembly appropriating funds for this purpose. The Department shall report on the status of any waiver developed or applied for pursuant to this subdivision to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2010.
- (2) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall apply to the Centers for Medicare and Medicaid Services (CMS) for a 1915(c) waiver to permit individuals who sustain traumatic brain injury after age 22 to access home and community-based Medicaid services. If approved, the Department shall not implement the waiver except as authorized by an act of the General Assembly appropriating funds for this purpose. The Department shall report on the status of the waiver to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2010.
- (3) Not later than September 30, 2009, the Department of Health and Human Services, Division of Medical Assistance, in conjunction with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall submit a written report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services summarizing its implementation of Tiers 1 and 4 of the CAP-MR/DD program and future plans for implementation of Tiers 2 and 3 of the CAP-MR/DD program. The summary shall include an explanation of (i) the planned array and intensity level of services to be made available under each of the four tiers, (ii) the range of costs for the planned array and intensity level of services to be made available under each of the four tiers, (iii) how the relative intensity of need for each CAP eligible individual will be reliably determined, and (iv) how the determination will be used to assign individuals appropriately into one of the four tiers. The Department shall not develop or submit an application to the Centers for Medicare and Medicaid Services for additional Medicaid waivers for Tiers 2 and 3 of the CAP-MR/DD program until it has submitted the report required by this subdivision.

SECTION 1.(e). State/County Special Assistance Residency Requirements. –

G.S. 108A-41(b) reads as rewritten:

"(b) Assistance shall be granted to any person who:

- (1) Is 65 years of age and older, or is between the ages of 18 and 65 and is permanently and totally disabled; and

- (2) Has insufficient income or other resources to provide a reasonable subsistence compatible with decency and health as determined by the rules and regulations of the Social Services Commission; and
- (3) Is one of the following:
- a. A resident of North Carolina for at least ~~90~~180 days immediately prior to receiving this assistance;
 - b. A person coming to North Carolina to join a close relative who has resided in North Carolina for at least 180 consecutive days immediately prior to the person's application. The close relative shall furnish verification of his or her residency to the local department of social services at the time the applicant applies for special assistance. As used in this sub-subdivision, a close relative is the person's parent, grandparent, brother, sister, spouse, or child; or
 - c. A person discharged from a State facility who was a patient in the facility as a result of an interstate mental health compact. As used in this sub-subdivision the term State facility is a facility listed under G.S. 122C-181."

SECTION 1.(f). – Child Treatment Program Funds. – There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of two million dollars (\$2,000,000) for the 2009-2010 fiscal year and the sum of two million dollars (\$2,000,000) in recurring funds for the 2010-2011 fiscal year for the North Carolina Child Treatment Program. These funds shall be used to provide (i) training and ongoing support to clinicians who provide treatment under the program and (ii) evidence-based mental health treatment to children and adolescents residing in this State who have experienced serious psychological trauma and their families.

SECTION 1.(g). – Fully fund implementation of Tier 1 of CAP/MR-DD Program. – There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of \$ for the 2009-2010 fiscal year and the 2010-2011 fiscal year. These funds shall be used to fully fund implementation of Tier 1 of the CAP/MR-DD Program.

SECTION 1.(h). – Housing Initiative Funds to reduce long-term need for State psychiatric hospitals. – There is appropriated from the General Fund to the Housing Trust Fund the sum of ten million dollars (\$10,000,000) for the 2009-2010 fiscal year for the Housing Initiative in order to reduce the need for State psychiatric hospitals in the long-term.

SECTION 1.(i). – DMH/DD/SA Funds for Housing Initiative Units. – There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of two million five hundred thousand dollars (\$2,500,000) for the 2009-2010 fiscal year and the sum of two million five hundred thousand dollars (\$2,500,000) for the 2010-2011 fiscal year to continue operating support for an estimated 500 units of the Housing Initiative in order to reduce the need for State psychiatric hospitals in the long-term.

SECTION 2.(a). Billing Changes. –

- (1) The Department of Health and Human Services (DHHS) shall create an "incurred but not reported" category of funds such that mental health, developmental disabilities, and substance abuse services provided in May and June of each fiscal year could be billed using normal protocols, thereby allowing State funds used to pay for these services to be reconciled to the correct fiscal year. The Department shall submit proposed new categories to the Office of State Budget and Management for its review and approval.

- (2) The Department of Health and Human Services may require that providers of mental health, developmental disability and substance abuse services submit bills to the LME for State-funded services within sixty days of the date the services were provided.

SECTION 2.(b). Service Dollar Re-allocations. – The Department of Health and Human Services may create a mid-year process by which it can reallocate State service dollars away from LMEs that do not appear to be on track to spend the LME's full appropriation and towards LMEs that appear able to spend the additional funds

SECTION 2.(c). Screening tool for ICF/MR placement. –

- (1) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall identify a screening tool that will determine how consumers currently access services from Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and that will ensure that consumers of these services are served at the appropriate level of care. The screening tool identified by the Department shall be administered by the LME to ensure that the screening is provided independent of the service provider and that LMEs are involved in actively managing the care of consumers in the LME's catchment area who are residents in ICFs/MR.
- (2) Not later than March 1, 2010, the Department of Health and Human Services shall report on the identification and implementation of the screening tool to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 2.(d). Death reporting in facilities providing MH/DD/SA services. –

- (1) The Department of Health and Human Services shall establish and maintain a database of all deaths occurring in facilities subject to regulation under Chapter 122C of the General Statutes. The database shall include the name and location of the facility, the time and date of death, and the cause of death as well as all details surrounding the death. All facilities regulated under Chapter 122C of the General Statutes, and all facilities required by law to report death occurring in the facility to the State Medical Examiner, shall report the information to the database within ten days of the date of the death.
- (2) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall provide training on death reporting to administrative and direct care employees that are employed in State facilities subject to regulation under G.S. 122C-181.

SECTION 2.(e). Funds for Regionally-Hosted Substance Abuse Services. – Of the funds appropriated to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for the 2009-2010 fiscal year for substance abuse services, the Department shall allocate ten million dollars (\$10,000,000) for the 2009-2010 fiscal year to support regionally-hosted substance abuse services. These funds shall be allocated to continue or expand Cross Area Service Programs (CASP) and other substance abuse treatment and prevention initiatives.

SECTION 2.(f). Money-Follows-the-Person Demonstration Grant. – There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services the sum of forty thousand dollars for the 2009-2010 fiscal year. These funds shall be used to supplement a

federally-supported grant for the transition of consumers out of nursing facilities, State psychiatric hospitals, and Intermediate Care Facilities for the Mentally Retarded (ICFsMR) to more appropriate levels of care.

SECTION 2.(g). NCIOM Substance Abuse Task Force Recommendations.

There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of ten million dollars (\$10,000,000) for the 2009-2010 fiscal year. These funds shall be used to implement one or more of the NCIOM Substance Abuse Task Force priority recommendations. Priority recommendations of the NCIOM Task Force include:

- (1) Development of a comprehensive substance abuse prevention plan for use at the State and local levels.
- (2) Providing funding for the establishment of six pilot projects to implement county or multi-county comprehensive prevention plans.
- (3) Supporting efforts to reduce high-risk drinking on college campuses.
- (4) Development of a pilot program to provide chronic disease management services to substance abuse clients and former clients. The purpose of the pilot is to decrease the number of short-term hospital admissions and to provide discharge planning and follow-up to reduce substance abuse client recidivism.
- (5) Educating and encouraging healthcare professionals to use the screening, brief intervention, and referral to treatment (SBIRT) model promoted by the federal government.

SECTION 2.(h). Service Authorization, Utilization Review, and Utilization Management.

- (1) The Department of Health and Human Services shall continue to implement its plan to return the service authorization, utilization review, and utilization management functions to LMEs for all clients. Not later than January 1, 2011, the Department shall return utilization review, utilization management, and service authorization for publicly funded mental health, developmental disabilities, and substance abuse services to LMEs representing in total at least sixty percent (60%) of the State's population. An LME must be accredited for national accreditation under behavioral health care standards by a national accrediting entity approved by the Secretary and must demonstrate readiness to meet all requirements of the existing vendor contract with the Department for such services in order to provide service authorization, utilization review, and utilization management to Medicaid recipients in the LME catchment area. Not later than July 1, 2010, the Department shall designate those LMEs that will be performing utilization review, utilization management, and service authorization on and after January 1, 2011, in accordance with this section.
- (2) The Department shall not contract with an outside vendor for service authorization, utilization review, or utilization management functions, or otherwise obligate the State for these functions beyond September 30, 2010. The Department shall require LMEs to include in their service authorization, utilization management, and utilization review a review of assessments, as well as person-centered plans and random or triggered audits of services and assessments.

SECTION 2.(i). Outpatient Commitment. – The Department of Health and Human Services and the Administrative Office of the Courts shall develop a pilot program to test a new process for tracking and providing services to persons in State psychiatric hospitals for whom an outpatient commitment order has been issued. The pilot should initially focus on

individuals in State hospitals where the individual's treatment history is known, and should provide for extended outpatient commitment for not less than 180 days. The pilot shall include arrangements with LMEs as the point of accountability-tracking and overseeing the individual's services and treatment at all times. The pilot shall identify a provider willing to accept outpatient commitments that have a history of difficulty in maintaining tracking and treatment of the client. The pilot shall also arrange for the designation of hospital liaison personnel to assist with discharge planning. Except for the 180 extended outpatient commitment time, if a conflict arises between this subsection and Part 7 of Article 5 of Chapter 122C of the General Statutes pertaining to outpatient commitments, Part 7 of Article 5 prevails.

SECTION 2.(j). Workforce Development Funds. There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of \$ for the 2009-2010 fiscal year, and the sum of \$ for the 2010-2011 fiscal year. These funds shall be used to establish a workforce development specialist position in the Division.

SECTION 2.(k). Psychiatric Hospital Bed Funding. There is appropriated in the to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of thirty-two million nine hundred seventy-two thousand one hundred sixty dollars (\$32,972,160) for the 2009-2010 fiscal year. These funds shall be allocated as follows:

- (1) \$16,985,660 to fully fund psychiatric hospital bed days funded in part for the 2008-2009 fiscal year, and
- (2) \$16,096,500 to purchase one hundred fifty additional local inpatient psychiatric beds or bed days.

The one hundred fifty additional beds or bed days funded under subdivision (2) of this subsection shall be distributed across the State according to need as determined by the Department. The Department shall enter into contracts with the LMEs and community hospitals for the management of beds or bed days funded under this subsection. Local inpatient psychiatric beds or bed days shall be managed and controlled by the LME, including the determination of which local or State hospital the individual should be admitted to pursuant to an involuntary commitment order. Funds shall not be allocated to LMEs but shall be held in a statewide reserve at the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to pay for services authorized by the LMEs and billed by the hospitals through the LMEs. LMEs shall remit claims for payment to the Division within 15 working days of receipt of a clean claim from the hospital and shall pay the hospital within 10 working days of receipt of payment from the Division. If the Department determines (i) that an LME is not effectively managing the beds or bed days for which it has responsibility, as evidenced by beds or bed days in the local hospital not being utilized while demand for services at the State psychiatric hospitals has not reduced, or (ii) the LME has failed to comply with the prompt payment provisions of this subsection, the Department may contract with another LME to manage the beds or bed days, or, notwithstanding any other provision of law to the contrary, may pay the hospital directly. The Department shall develop reporting requirements for LMEs regarding the utilization of the beds or bed days. Funds appropriated in this section for the purchase of local inpatient psychiatric beds or bed days shall be used to purchase additional beds or bed days not currently funded by or through LMEs and shall not be used to supplant other funds available or otherwise appropriated for the purchase of psychiatric inpatient services under contract with community hospitals, including beds or bed days being purchased through Hospital Pilot funds appropriated in S.L. 2007-323. Not later than March 1, 2010, the Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on a uniform system for beds or bed days purchased (i) with local funds, (ii) from

existing State appropriations, (iii) under the Hospital Utilization Pilot, and (iv) purchased using funds appropriated under this subsection.

SECTION 2.(l). BART Step-down Unit Funds. There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of one million eight hundred thousand dollars (\$1,800,000) for the 2009-2010 fiscal year. These funds shall be used to develop a behaviorally advanced residential treatment (BART) step-down unit that would be operated by the Murdoch Center. These funds include private provider training and technical assistance to facilitate replication through the State.

SECTION 2.(m). Funds to increase staffing and salary ranges at DHHS and the State psychiatric hospitals.

There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of \$ for the 2009-2010 fiscal year, and the sum of \$ for the 2010-2011 fiscal year. These funds shall be used to increase staff and raise salary ranges for Division and State psychiatric hospital personnel.

SECTION 2.(n) The North Carolina Institute of Medicine (NCIOM) is requested to conduct a study of mental health, developmental disability and substance abuse services that are funded with Medicaid funds and with State funds. The purpose of the study is to determine what services are currently available to active, reserve, and veteran members of the military and National Guard and the need for increased State services to these individuals. The NCIOM shall report its findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on or before the convening of the 2010 Regular Session of the 2009 General Assembly.

SECTION 3. Section 1.(a) is effective when this act becomes law. The remainder of this act becomes effective July 1, 2009.